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Attorneys for SCOTT K. CANEPA

**UNITED STATE BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:)	Case No. BK-S-06-10725-LBR
)	Case No. BK-S-06-10726-LBR
USA COMMERCIAL MORTGAGE COMPANY,)	Case No. BK-S-06-10727-LBR
)	Case No. BK-S-06-10728-LBR
Debtor.)	Case No. BK-S-06-10729-LBR

In re:)	Chapter 11
USA CAPITAL REALTY ADVISORS, LLC,)	

**Jointly Administered Under
 Case No. BK-S-06-10725-LBR**

In re:)
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,)
)
Debtor.)

In re:)
USA CAPITAL FIRST TRUST DEED FUND, LLC,)
)
Debtor.)

In re:)
USA SECURITIES, LLC,)
)
Debtor.)

Affects:)
<input type="checkbox"/> All Debtors)
<input checked="" type="checkbox"/> USA Commercial Mortgage Company)
<input type="checkbox"/> USA Securities, LLC)
<input type="checkbox"/> USA Capital Realty Advisors, LLC)
<input checked="" type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC)
<input checked="" type="checkbox"/> USA First Trust Deed Fund, LLC)

Date: June 21, 2006
 Time: 9:30 a.m.

**CANEPA OPPOSITION TO
 MOTION FOR AUTHORITY TO FORBEAR AND TO PROVIDE FURTHER
 FUNDING FOR CERTAIN OUTSTANDING LOANS [Affects USA Commercial
 Mortgage Company, USA Capital Diversified Trust Deed Fund, LLC and USA Capital
 First Trust Deed Fund, LLC]**

1 SCOTT K. CANEPA, a Direct Lender holding over 51% of the beneficial interest in the
 2 promissory note secured by deed of trust signed by BOISE/GOWAN, LLC ("Boise/Gowan"),
 3 submits this Opposition to only the "funding portion" of the Debtors' Motion for Authority to
 4 Forbear and to Provide Further funding for Certain Outstanding Loans ("Funding Motion"). This
 5 Opposition is made and based upon the following points and authorities, Mr. Canepa's Motion for
 6 relief from the automatic stay to terminate the Loan Servicing Agreement with respect to the
 7 Boise/Gowan loan, reply, supporting declarations, exhibits and the Court's record for the hearing on
 8 Mr. Canepa's Motion held June 15, 2006 at 10:00 a.m. (Docket 292, 293 632, 636).

9 POINTS AND AUTHORITIES

10 1. On June 9, 2006, the Debtors filed their Funding Motion, seeking permission to
 11 advance \$125,000 from operating cash on deposit in the bank account of USA Commercial
 12 Mortgage Company ("USA Commercial") in order to fund a loan to Boise/Gowan 93 LLC, an Idaho
 13 limited liability company ("Boise/Gowan").

14 2. Scott E. Bice is a Commissioner for the State of Nevada, Department of Business and
 15 Industry, Division of Mortgage Lending ("Division"). Based upon NRS 645B and NAC 645B, the
 16 Division has primary regulatory authority over NRS 645B mortgage licenses. *See* Bice Opinion
 17 Letter, Canepa Reply Decl., Docket 636, Exhibit O.

18 3. The Division has imposed significant limits on USA Commercial's mortgage license.
 19 Attached to the Canepa Reply Decl., Docket 636, as Exhibit K is an authentic copy of Mr. Bice's
 20 May 1, 2006 Order, and the June 13, 2006 final order issued on behalf of the Division. The May 1,
 21 2006 Order contains nine pages of factual findings and conclusions of law with respect to USA
 22 Commercial's myriad and diverse violations of Nevada law, and the Order virtually eliminates USA
 23 Commercial's future ability to broker loans funded by non-institutional lenders:

24 NOW, THEREFORE, IT IS HEREBY ORDERED that USA
 25 mortgage broker's license is conditioned upon USA not making any
 26 loans secured by liens on real property funded by private, non-
institutional investors; USA may only make loans secured by liens on
real property funded by institutional investors.

27 Canepa Reply Decl. (Docket 636) Exhibit K, attached, May 1, 2006 Order, p. 10 (emphasis added).

28 4. Based upon the conditions imposed upon USA Commercial's mortgage license, it is

1 not permitted to make the proposed loan to Boise/Gowan from its operating cash.

2 5. Attached to the Canepa Reply Decl. (Docket 636) as Exhibit H is an authentic copy
3 of the Boise/Gowan Construction Loan Agreement dated August 26, 2005 which he signed as a
4 Direct Lender. Section Three of the Construction Loan Agreement contains the following
5 provisions:

6 3.1 Amount of the Loan. Subject to the terms and conditions
7 set forth in this Agreement, Lender agrees to make a loan ("Loan") to
8 Borrower in a principal amount of Two Million One Hundred Fifty
9 Thousand Dollars (\$2,150,000) (the "Loan Amount"). ...

10 3.2 Increase in Loan Amount. From the Effective Date
11 through and including August 1, 2006, Lender and USA shall have
12 the exclusive right, but not the obligation, to increase the Loan
13 amount to an amount not to exceed Two Million Five Hundred Fifty
14 Thousand Dollars (\$2,550,000). ...

15 Canepa Reply Declaration, (Docket 636) Exhibit H, attached, pp. 6-7 (emphasis added).

16 6. Mr. Canepa's Loan Servicing Agreement entered into with USA Commercial, Exhibit
17 E, see Scott Canepa Declaration in Support of Motion ("Initial Decl.") (Docket 293), contains the
18 following provision:

19 Notwithstanding the foregoing or any other provision contained
20 herein, USA may not permit any modification to any Loan that would
21 ... change the outstanding principal amount, or extend the maturity
22 date, without Lender's prior consent; provided, however, if Lender
23 fails to grant or deny its consent within three (3) business days after
24 notice from USA, Lenders shall be deemed to have conclusively
25 given its consent.

26 Initial Decl., DE 293, Exhibit E, p. 3, Section 2(e), last sentence (emphasis added).

27 7. The Special Power of Attorney that Mr. Canepa signed with respect to the Boise
28 Gowan Loan, Initial Decl. DE 293, Exhibit F, contains the following provision:

The services to be performed are described below: ...

(c) To modify and amend the Note or Deed of Trust on such
terms and conditions as required by the Loan Agreement, subject to
the provisions of this Declaration.

Exhibit F, pp. 1-2 (emphasis added).

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1 8. Mr. Canepa does not consent to an additional advance of \$125,000 to Boise/Gowan.
2 Canepa Reply Declaration, (Docket 636), ¶12(c).

3 9. On June 15, 2006, the Bankruptcy Court heard Mr. Canepa's Motion for Relief from
4 Stay to Terminate Loan Servicing Agreement on Boise/Gowan, and to retain a new loan servicing
5 agent ("Canepa Motion"). The Canepa Motion was continued to August 4, 2006, at 9:30 a.m. As
6 a condition of continuing the hearing date to August 4, the Bankruptcy Court ordered the parties to
7 maintain the status quo on the loan, which includes: (a) no additional advances to the borrower; and
8 (b) no extension of the August 26, 2006 loan maturity date. This condition requires a denial of the
9 Funding Motion.

10 10. Mr. Canepa incorporates herein by reference, as though fully set forth at length, his
11 points and authorities, declarations and exhibits filed in support of the Canepa Motion (Motion and
12 Reply), Docket 292, 293, 632, 636.

13 For each of these reasons, and based upon the legal analysis more particularly set forth in the
14 Canepa Motion, the Funding Motion must be denied.

15 Dated: June 19, 2006.

16 Respectfully submitted,

17 LIONEL SAWYER & COLLINS

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19 By _____
20 Laurel E. Davis

21 Attorneys for Scott Canepa
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